

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF PENNSYLVANIA**

WASSEL, KAITLYN

Plaintiff,

v.

THE PENNSYLVANIA STATE UNIVERSITY:

Defendant.

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: CIVIL ACTION NO. 4:23-CV-2071
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: JURY TRIAL DEMANDED
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COMPLAINT

1. Former Penn State University (“Penn State”, “the University” or “PSU”) student, Kaitlyn Wassel (“Kaitlyn”) brings this action against The Pennsylvania State University pursuant to 42 U.S.C. § 1983 and Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, to redress injuries she suffered as a result of the University’s failure to protect her from four years, Fall of 2018 through January 1 of 2022, of sexual and gender-based harassment by her Penn State Blue Band Majorette coach, Heather Bean (“Bean”), and from retaliation following her and her parents’ complaints. At the time the gender-based harassment and retaliation occurred, Kaitlyn was an undergraduate engineering student who represented Penn State as a member of the Blue Band’s majorette team.



2. Head Coach Bean's gender-based misconduct toward the women she coached was no secret. Penn State's Blue Band Director Drane and administrators had been told about or had observed coach Bean's abusive and discriminatory conduct. Indeed, majorettes had lodged complaints against Bean with the University's Blue Band Director, Title IX and Ethics offices, prior to and during the four years Kaitlyn twirled for Penn State.

3. Bean, PSU's majorette head coach since 1994 until her Fall of 2022 resignation, amassed a record of competitive successes, including winning national championships for Penn State. Sadly, the University prioritized the prestige Bean brought to the University over the safety and well-being of its students; it valued its reputation over its integrity and Kaitlyn and other majorettes were predictable casualties.

PARTIES

4. Plaintiff Kaitlyn Wassel is a former Penn State engineering student and member of the University's prestigious Blue Band majorette team. She attended Penn State from 2018–2022 and was a majorette in each of those years. Kaitlyn is a resident of Hagerstown, Maryland.

5. Defendant Penn State is a major, public university that receives state and federal funding and located in Centre County, Pennsylvania. Penn State is independently governed and is associated with Pennsylvania's Commonwealth System of Higher Education. Penn State's Blue Band is directed by Marching Blue Band and Athletic Band Director Dr. Gregory Drane. Heather Bean served under Dr. Drane as Penn State's Marching Band's majorette Head Coach. Penn State receives federal funding and financial assistance within the meaning of 20 U.S.C. § 1681(a) and is otherwise subject to Title IX.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331 because Plaintiff's claims arise under federal law—§ 1983 and Title IX. Penn State was at all relevant times a state actor subject to suit for the deprivation of Kaitlyn's constitutional rights under § 1983. And Penn State is a federally funded educational institution subject to suit for sex discrimination against Zara under Title IX. *See Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 76 (1992).

7. This Court is a proper venue for this action under 28 U.S.C § 1391(b)(2) because a substantial part of the events, acts, or omissions giving rise to the claims occurred in this district.

BACKGROUND

8. Kaitlyn's passion for twirling began when she was 12-years old after she attended a free 8-week trial clinic in her hometown, Hagerstown, Maryland. She was drawn to twirling's athleticism, individual artistic expression, and being part of a team. After the clinic ended, she joined a Hagerstown twirling club and practiced three days a week. From there she advanced to a competitive team that competed nationally.

9. Kaitlyn remembers being inspired to excel in her sport while watching college twirling teams compete during one of these national competitions. She specifically recalls watching the then-national champion Penn State twirling team during the competition and deciding that she would work as hard as necessary to twirl in college – the pinnacle achievement for a developing majorette.

10. With collegiate twirling as her end goal, Kaitlyn joined a world champion Baltimore-based twirling club, a one-and-a-half-hour drive each way from her house. The club practiced four times per week. While on this team, a former Penn State twirler coached Kaitlyn,

which inspired her to work harder and advance much more quickly and to focus on Penn State as her “dream school.”

11. Penn State established its Blue Band majorettes in 1972. According to a Penn State website: “[o]ver the last five decades, the squad has not only become a beloved symbol of Penn State pride but has also won several team and individual national championships.”

12. The majorettes are a typically comprised of between 8-12 twirlers and are a component of the approximately 320 member “Blue Band”, a storied 125-year old Penn State institution which, according to its web site, “endeavor[s] to provide a safe environment for all members with the intent to be viewed as an organization of members with exceptional integrity.”

13. Heather Bean became Penn State’s head majorette coach in 1994 and remained in that position until she resigned in the Fall of 2022.

14. Dr. Gregory Drane served as the Director of the Penn State Blue Band and Athletic Bands since July 1, 2015. He served as its Assistant Director for the ten years preceding that and has been part of the Blue Band staff since 2002. Dr. Drane was Heather Bean’s supervisor and as a “Director” served an important “reporting” role under Penn State’s Title IX and anti-discrimination policies. Eric Bush served as Dr. Drane’s Assistant Director of Bands from July 2015 to June of 2018.

15. During the time period at issue, Penn State delegated Title IX and discriminatory conduct enforcement and compliance to, among others, its Office of Ethics and Compliance, the Office of Sexual Misconduct and Prevention (“OSPM”), and the Affirmative Action Office.

Kaitlyn Fulfills Her Dream of Attending Penn State and Becoming a Blue Band Majorette

16. Kaitlyn applied to Penn State during her Fall of 2017 senior year of high school. With the support of her Baltimore coach, Kaitlyn contacted Penn State Band Director Dr. Drane and

arranged to try out for the majorette team in March of 2018. As a pre-condition for participating in Penn State's tryouts, Kaitlyn committed to attending Penn State before knowing whether she would make the team.

17. After Penn State accepted Kaitlyn, she travelled to University Park in March of 2018 to participate in an 8-hour tryout. Kaitlyn first met Bean during the March of 2018 tryouts.

18. Kaitlyn made the team and her family began focusing on the costs of funding her education. Kaitlyn's mother applied for a full-time position at Penn State Mount Alto, the closest campus to their Hagerstown residence in order to be able to afford the expensive out-of-state tuition. Penn State employees receive a significant tuition discount for their children. Although Penn State did not hire Kaitlyn's mother to work at their Mount Alto campus, she was offered, accepted a full-time University Park position, and rented a State College apartment where she stayed five days per week.

Kaitlyn's Penn State Twirling Years 2018-2022

19. Kaitlyn began her first twirling season in the Fall of 2018. She attended practices almost every school day in preparation for Saturday football game appearances.

20. Kaitlyn also took a one-credit Marching Blue Band class given by Heather Bean's supervisor, Band Director Dr. Drane. She took this class in each of her Fall semesters throughout her college years.

21. Coach Bean began harassing Kaitlyn during the Fall 2018 semester. Almost immediately, Bean began "fat-shaming" Kaitlyn. She targeted Kaitlyn and other teammates based upon her view that their body size did not comport with what a stereotypical woman should look like. At the beginning of the season, Bean purposefully humiliated Kaitlyn by forcing her to wear a uniform that was too small. Bean refused to permit Kaitlyn to trade her uniform with a teammate

whose uniform was too big. Although the team had a seamstress, Bean prohibited Kaitlyn and other majorettes she viewed as large or heavy from having their uniforms, purposefully chosen by Bean to be ill-fitting, altered or exchanged so they would fit. Bean weaponized Kaitlyn's uniform fit to humiliate and embarrass her for not being thin or small. In contrast, Bean facilitated the seamstress' alteration of the smaller majorettes' costumes.

22. Bean told Kaitlyn that she would not be permitted to change her uniform during the four years she was a Penn State majorette. Bean prevented Kaitlyn from changing her uniform even though she grew four inches while in college.

23. Bean routinely admonished Kaitlyn to be more like a squad member that had previously been reported to have an eating disorder. Bean told Kaitlyn she needed to lose weight and made it clear that she would need to change her body to fit the uniform. Kaitlyn subsequently developed disordered eating during her freshman year which continued throughout her college years.

24. During virtually every practice session, Bean reprimanded Kaitlyn about her eating, body shape, and the fit of her uniform. She forced Kaitlyn to wear the ill-fitting uniform as a means to shame her and make her feel that she did not comport with what a woman should look like -- routinely in front of her teammates. Bean further diminished Kaitlyn by comparing her to the smallest team members who she held out as the models of what females should look like.

25. Bean's weight and body size-related comments and conduct continued and persisted up to the January 1, 2022, bowl game – Kaitlyn's last majorette event.

26. Bean held herself out to be a "devout" Christian to Kaitlyn and other squad members. She would often comment on her religious beliefs and encourage team members to pray. In a representative display of her religious beliefs, she admonished a squad member who came out as a lesbian and sent her bible verses that denounced same sex relationships.

27. During the Fall of 2018, Kaitlyn was sexually assaulted by a Penn State student on campus. She was distraught and did not know what to do or how to report it. She disclosed the assault to coach Bean believing that she, as her coach and the Penn State employee who she spent the most with, would support and assist her. Instead, Bean became enraged and threatening, and berated Kaitlyn as a “whore.” She told Kaitlyn that the sexual assault was “against God’s will” because she “was supposed to wait until marriage.”

28. Bean, a mandatory Penn State reporter, refused to report the assault as she was required. Bean ordered Kaitlyn not to report or even speak of the assault and threatened to tell the team that she was a “whore” and “slut.” She told Kaitlyn that her teammates would hate her because of it. Kaitlyn later learned that Bean told other majorettes that she was a “bad person” and to stay away from her in the wake of her sexual assault disclosure.

29. Later that same semester, a lice infestation broke out among twirling team. Bean told Kaitlyn that it was her fault the team got lice because she was “such as whore” and that the team was lucky that she did not spread an STD to them.

30. Bean began calling Kaitlyn during the weekends demanding to know what her plans were, where she was going, and who she would be with. Bean told Kaitlyn that she was demanding the information because she was a “slut” and a “whore.”

31. Beginning from the time that Kaitlyn disclosed her assault and lasting through the 2022 bowl game, Bean singled Kaitlyn out for discriminatory treatment based upon her sexual victimization. Bean:

- (a) regularly interrogated Kaitlyn about her personal, social and sexual life and repeatedly called her in the evenings and weekends demanding highly personal and private information from her;

- (b) solicited Kaitlyn's teammates to provide highly personal information about Kaitlyn to her;
- (c) referred to Kaitlyn as a "whore" and "slut" on an almost daily basis and told her and others, including her teammates, that she was a "bad" person who should not be trusted;
- (d) warned Kaitlyn's teammates not to befriend her and threatened to kick them off the team if she saw them talking to her;
- (e) routinely warned and threatened Kaitlyn, in comments made to her and her teammates, about her perceived sexual conduct, and;
- (f) Bean told Kaitlyn that the whole team would not be able to choose their roommates during bowl game travel (in contrast to the rest of the Blue Band who were able to choose their roommates) because she did not trust "whoring" and "slutty" Kaitlyn to be around underclassman.

32. During Kaitlyn's 2019-2020 sophomore school year, Witness 2 (see below) initiated formal discrimination complaints against Bean with Band Director Drane, Penn State's Office of Ethics and Compliance, and the Office of Sexual Misconduct and Prevention.

33. In the wake of those complaints, Bean warned Kaitlyn that she had "friends" at the University's "Ethics office" who would tell her if anyone made a complaint. Bean told Kaitlyn then and repeated many times throughout her college years, that she would be kicked off the team or expelled if she ever reported her to the University.

34. In the Summer of 2020, Kaitlyn became one of two majorette captains. Bean used Kaitlyn's captaincy as a pretext to increase her bullying and harassment and to exert an even greater level of control and intrusive surveillance of her personal and social life.

35. During the Fall of 2020, Bean became enraged at Kaitlyn after learning that she was rooming with two fellow majorettes. Bean warned other members of the team that they should not hang out with her or speak to her outside of practice if they wanted to remain on the team.

36. Bean reminded Kaitlyn during almost every practice that the team hated her and didn't want her there. Bean arranged for team photos to be taken only when Kaitlyn was not present.

37. Bean enlisted a teammate to share Kaitlyn's geolocation tracking data from a social media app under the pretense that Kaitlyn, as a "whore" and "slut," could not be trusted to be out of her apartment or around other squad members. Bean rigidly surveilled Kaitlyn's locations and called or texted her when she learned through app data or teammate reports that Kaitlyn left her apartment. Bean demanded to know where she was, what she was doing, and who she was with.

38. A teammate, acting in concert with Bean's "whoring and slut" attacks, aggressively bullied Kaitlyn about her social life and the increasingly severe mental health symptoms she experienced because of Bean's abuse.

39. During that same semester, Kaitlyn reported the teammate's bullying to Bean – unaware then that the teammate was acting at Bean's direction. Bean responded by referencing Kaitlyn's judgments about what she believed about her sexual conduct and telling her that "you deserve everything that's coming to you" and that "you should think about why you deserved to be bullied and to fix yourself."

40. Bean's harassment intensified in the wake of Kaitlyn's bullying complaint. Bean's name calling, weight and sex-based comments became increasingly frequent and vicious, and Kaitlyn's already precarious mental and physical health precipitously declined.

41. In March of 2021, Kaitlyn attempted suicide after having a breakdown that required a multi-day hospitalization.

42. While Kaitlyn was in the hospital, Kaitlyn's mother and father -- John and Mary Wassel -- confronted Bean and told her that she was the reason why their daughter attempted suicide. They told Bean that her relentless bullying, her comments telling her that she was a "whore and slut", her fat shaming, the pitting of her teammates against her, and her intrusive attempts to surveil and control her social life, drove Kaitlyn to attempt suicide. Bean did not deny engaging in the conduct.

43. The Wassel's directed Bean to report the conversation to her supervisor, Band Director Dr. Drane. They also implored her not to share Kaitlyn's condition with her teammates.

44. Within days, Bean disclosed Kaitlyn's condition and circumstances to her teammates. Bean characterized Kaitlyn as being "dramatic" and a "faker".

45. Drane later advised the Wassel's that he was aware that they had gone to speak with Bean and told them that "he was working on it." The Wassel's saw no changes and asked Drane a few weeks later if he did anything. He responded that he was hopeful that they would notice changes.

46. Neither Kaitlyn nor her parents noticed positive changes after the conversation. To the contrary, Drane and Bean took retaliatory actions against Kaitlyn after her parents' complaints. Days after Kaitlyn returned to practice, Dr. Drane called Kaitlyn into a meeting with him and Bean. Kaitlyn was reluctant to discuss Bean's bullying in specific terms because she was terrified of her and because she viewed Drane as deliberately trying to silence her by including Bean in the meeting following her parents' complaint. Nonetheless, Kaitlyn discussed being bullied although she used generalities during the discussion because she was afraid that Bean would retaliate against her.

47. Drane was entirely dismissive, asked her no questions, and told her that "everyone goes through shit". The next day, Drane stripped Kaitlyn of her team captain role and told her to "wait a week to see if [she] still wanted to be part of the organization."

48. Bean also called Kaitlyn into a private meeting and demanded that she share details of the suicide attempt with her. Bean told Kaitlyn “I didn’t do anything wrong” and threatened that she would have Kaitlyn expelled from the University or kicked off team if she reported her.

49. Kaitlyn did not report Bean’s threats because she feared the promised consequences of doing so and because she did not know how or who to report it to or that she would be protected from retaliation if she did.

50. In the Fall of 2021, after Bean learned that Kaitlyn broke up with her boyfriend, Bean told her that she would go back to her “whoring ways” and “spread STD’s”. Bean told freshman twirlers that Kaitlyn was a “bad person” and that they needed to stay away from her.

51. Throughout the Fall semester and up through the final, end of December, practice days prior to the January 1, 2022, bowl game, Bean disparaged and discriminated against Kaitlyn based on her body size, weight and the fit of her uniform.

52. Throughout the Fall semester and up through the January 1, 2022, bowl game, Bean disparaged and discriminated against Kaitlyn because she had reported sexual contact – no matter that it was with her consent – as against her religious beliefs and therefore a danger to her teammates. Bean warned other majorettes to stay away from Kaitlyn and threatened to punish them if they did not. Bean once again prohibited the entire team from choosing their travel roommates during the January 1, 2022, bowl game because, as she made known to other team members, she did not trust Kaitlyn to be around younger teammates.

Kaitlyn’s Mental Health Deteriorates as a Result of Bean’s Discriminatory Abuse

53. Kaitlyn had no mental health issues prior to attending Penn State. She had no need for mental health treatment or medication. She was happy, healthy, well-adjusted, and driven.

54. Bean’s harassment was devastating and all encompassing. In her freshman year,

Kaitlyn began experiencing regular panic attacks during which she hyperventilated and had trouble breathing. She was constantly crying and riven with anxiety.

55. Kaitlyn began isolating from her peers and Bean -- hiding out from them by staying at her mother's apartment instead of her dorm room or in her upperclassman apartments in the years that followed.

56. Kaitlyn suffered debilitating and frequent panic attacks as a result of Bean's abuse, which she continues to suffer to this day although on a less frequent basis.

57. Kaitlyn developed disordered eating as a freshman which intensified throughout her college years. She starved herself and threw up after she ate. She constantly weighed herself and obsessively exercised up to three times a day in an effort to change her body size to comport with Bean's expectations and demands.

58. She began experiencing sleeping problems as a freshman, suffering from intrusive thoughts when she tried to fall asleep and nightmares when she did fall asleep. She dreamed that Bean said abusive things to her, that Bean kicked her off the team, and that Bean showed up at her job interviews and told prospective employers not to hire her. Kaitlyn's sleeping issues persisted even after her college graduation.

59. Kaitlyn suffered from flashbacks during the day during which thoughts of Bean's bullying and harassment were so intrusive and felt so real, that her body and mind viscerally reacted as if she was experiencing the abuse in real time. The few occasions Kaitlyn returned to campus post-graduation triggered mental health reactions notably flashbacks of the abuse. Kaitlyn continues to experience flashbacks although on a less regular basis.

60. Kaitlyn developed fears of reading her text messages believing that they would contain messages from Bean which sought to admonish her or demand personal information from

her.

61. Kaitlyn had trouble focusing on her classes and learning, her grades suffered, and she had to take summer class after her sophomore and junior years.

62. Kaitlyn's mental health symptoms sharpened, becoming more frequent, intrusive, disruptive, panicked, disorienting, and life threatening, throughout her four years twirling. She viewed her life as a Penn State student as an abstraction, something to be survived. Bean prevented her from flourishing academically or socially.

63. By the summer of 2020, Kaitlyn sought mental health treatment and began taking psychotropic medications. In the Spring of 2021, Kaitlyn tried to take her life necessitating inpatient hospitalization. The effects of Bean's harassment were so devastating that Kaitlyn was unable to finish her classes by the end of the semester which required her to defer her grades until the summer so that she could complete her coursework. Kaitlyn also stopped "attending" Bean's a once-a-week second semester 2021 online stretching course (the team didn't practice during the Spring), a venue Bean used to bully and harass her, because of her illness and suffering.

64. As a direct result of Bean's abuse, Kaitlyn continues to need mental health treatment and medications, and continues to suffer panic attacks, sleep disturbances, and the effects of her intrusive thoughts.

Kaitlyn Joins Her Former Teammates In Pursuing a Formal Group Complaint Against Bean In August of 2022, After University Administrators Ignore Her Individual May 2022 Complaint

65. In May of 2022, one week after her Penn State graduation, Kaitlyn initiated a complaint about Bean's conduct during a meeting with Dr. Drane's assistant, Assistant Athletic Band Director Miquelena Ferguson and a human resource representative. Kaitlyn recounted Bean's discriminatory conduct in detail and the retaliation she endured following her and her parents'

complaints to Bean and Drane.

66. Kaitlyn received no response to the complaint as of August of 2022, and she decided to join every then current upper-class twirling team member and other twirling alumnus who were separately initiating complaints against Bean. The group, including Kaitlyn and other graduated majorettes, met with a Penn State Dean on the first day of the 2022 Fall semester and Kaitlyn and others voiced complaints about both Bean and Drane. Kaitlyn and others complained about the gender-based harassment and the bullying Bean subjected them to and Drane's refusal to protect them. Kaitlyn later received notice that Penn State's Affirmative Action Office would be investigating. Kaitlyn and other team members participated in that investigation.

67. A February 27, 2023, letter summarized the Penn State joint Affirmative Action Office/Human Resources investigation allegations "that Heather Bean, former Majorette Coach, made inappropriate comments to members of the Penn State Blue Band Majorettes regarding sexual misconduct, asked inappropriate questions regarding their romantic/sexual activities, failed to report allegations of sexual misconduct to the Title IX Coordinator, bullied and body-shamed Majorettes, inappropriately inquired about their whereabouts during hours that are outside of Blue Band activities and made retaliatory statements to Majorettes after several of these allegations were reported."

68. Associate Vice President for Affirmative Action Suzanne C. Adair, Ph.D., and Human Resources Consultant Shelly Marquardt, found that allegations "that Bean made negative comments about Majorettes' sizes and weights was corroborated by several witnesses, therefore Investigators believe that there were times when Bean made comments to or about students regarding their bodies/weight that left them feeling criticized, ostracized, and ashamed. Such conduct violates [University] policy, which requires University employees to maintain a respectful workplace and educational environment." The University concluded that "one of the most prevalent allegations in

this investigation was the amount of body shaming and negativity surrounding team members' sizes and weights, almost entirely related to their costumes" and "recommended a re-evaluation of how costumes are purchased, assigned, and maintained in order to reduce the potential for such allegations to occur in the future, regardless of who is in the position of Coach."

69. The February 27, 2023, letter also referred to "allegations that Bean monitored students' whereabouts, controlled relationships among the team, and bullied some of the students". Associate Vice President for Affirmative Action Suzanne C. Adair, Ph.D., and Human Resources Consultant Shelly Marquardt, found that "many of these allegations were corroborated. . . indicating that Bean did not always maintain appropriate boundaries with the students and was at times overly involved in the lives of some members of the team. Bean's conduct contributed to increased levels of anxiety and fear among some members of the team." The letter concluded that "the University's expectation that as the Coach, Bean was to maintain clear boundaries with students and demonstrate the ability to manage challenging students and situations appropriately, which was at times, not the case. Given the analysis of the evidence related to these allegations specifically, Investigators find that such behavior violated" University policy.

70. Ultimately, the University found that they could not substantiate the Sexual Discrimination and Harassment complaints against Bean "given that some of the interactions presented occurred without the presence of witnesses." The University wrote that it could not discipline her because she had resigned from the University.

71. Although the "findings" letter never mentioned the complaints levied against Director Drane, the Blue Bands current director, it includes the "recommendation[]" for an "assessment of the reporting structure of the Majorettes' Coach within the Blue Band, as well as the nature of the contact between the Director and the Majorettes specifically, to determine a more

effective way to increase oversight in general and to facilitate more substantive interactions between the team and the Director, to generate the level of trust needed to ensure there is a clear path for Majorettes to have conversations with him regarding any concerns about future Coaches.”

Bean’s Harassment Was Severe and Pervasive

72. For four years, Bean relentlessly harassed, attacked, and humiliated Kaitlyn because she was a woman who, despite her singular talent and dedication to twirling and the Blue Band, did not comport with her view of what a woman’s body shape and form should look like. No matter that this was her God-given, healthy, and appropriate body shape and form. No matter that she was a gifted athlete who excelled in her discipline and trained with fierce dedication. No matter that Kaitlyn often starved herself and worked out an obsessive three times a day. Bean decided on day one that Kaitlyn should, must, fit in a uniform that she quite intentionally chose because it was too small to fit her.

73. Bean relentlessly harassed, attacked, and humiliated Kaitlyn because she had disclosed being raped just weeks into her first semester freshman year. Bean, then a middle-aged adult woman with a daughter of her own who was also a Penn State majorette, launched a sustained and brutal attack against Kaitlyn, then 18 years old, because she had the temerity to disclose her rape and to turn to her coach for help. Bean repudiated Kaitlyn in her hour of desperation, berating her as a “whore” and “slut” and threatening that she would see to it that her teammates hated her if she disclosed the assault.

74. For the next four years, up until the very last Blue Band bowl event Kaitlyn twirled in, Bean gaslighted Kaitlyn to make her believe that she *was* a “whore” and a “slut” who acted against God and deserved to be raped. Bean treated Kaitlyn as if she was sexually promiscuous – which was patently false – and as such, a danger to her teammates. Bean betrayed the trust that Kaitlyn placed

in her at the most vulnerable point in her life and that betrayal has had catastrophic effects on her health and well-being.

75. Title IX prohibits gender-based harassment, which includes “acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping,” even if those acts do not involve “conduct of a sexual nature.” *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30,026, 30,179 (May 19, 2020). Bean felt that women should be petite and razor-thin, and that Kaitlyn should fit that profile even at the expense of her health and well-being. Bean believed that a woman, Kaitlyn, should not engage in premarital sex – no matter that it was not consensual -- and that she must have done something wrong, must have caused their sexual victimization and is to blame for what happened to her and deserved no better. As a result, Bean treated Kaitlyn as an infectious disease, like an STD, and which must be sequestered from other women less they too succumb to the sins she committed.

76. In sum, Bean’s gender-based harassment was so severe, pervasive, and objectively offensive that it effectively barred Kaitlyn’s access to the plethora of educational opportunities Penn State provided to her peers.

Bean’s Conduct was Continuing in Nature

77. Bean’s sex-based discrimination was part of a continuing practice, and as the last act evidencing that continuing practice falls within the statutory time limitation, all of her conduct throughout Kaitlyn’s Penn State tenure (2018–2022) is actionable as a continuing violation. The continuing violation doctrine applies to Title IX claims. *See Moss v. Penn. State Univ.*, No. 4:22-CV-00529, 2023 WL 1456773, at *4-6 (M.D. Pa. Feb. 1, 2023).

78. Bean’s demeaning, derogatory and predatory sex-based comments and behavior constituted a pattern that she repeated practice after practice, bowl game after bowl game, day after

day, and year after year. In other words, Bean's sex-based discrimination continued into the statutory time period, through Penn State's January 1, 2022, bowl game and was not a series of discrete actionable offenses to be considered independently.

*Penn State Officials With Sufficient Power And Authority Had Notice
That Bean Presented a Danger to the Students They Hired Her to Coach*

79. The majorettes that Bean coached under Drane's authority as Blue Band Director, were terrified of Bean and believed that Drane, who had witnessed Bean's misconduct and who had received complaints about her but done nothing, had no interest in their welfare.

80. Bean and Drane warned squad members that they had "friends" in "Ethics" and other high places and they would know who reported them. They both harshly retaliated against those they knew reported them. Bean repeatedly told Kaitlyn that she would be expelled from the University or kicked off team if she reported her. Drane stripped her of her captaincy following her report and dismissed her complaints.

81. Despite this fear, the University had notice that Bean and Drane were participating in discriminatory and retaliatory conduct before and during the time period Kaitlyn was a majorette.

Witness 1

82. Witness 1 ("W1") twirled for Penn State and under Coach Bean's reign for five years – from 2012-2017.

83. Like Kaitlyn, Bean attacked W1, then suffering from an eating disorder, on the basis of her size and eating habits. Bean forced W1 to wear a uniform that did not fit and told her that she would have to wear the same uniform for her four years on the squad. Bean used the ill-fitting uniform to shame and berate her.

84. Like Kaitlyn, Bean harassed, demeaned, and repudiated W1 on the basis of her perceived promiscuity. One such example was when Bean announced to other squad members that

W1 was a “whore who fucked half the football team.” Bean held W1 out to squad members as an example of a “slut” and why they would not want to be one like her.

85. Bean’s harassment and abuse continued throughout the five years W1 was on the squad.

86. The effects of Bean’s abusive conduct on W1 were apparent to Drane and his then Assistant Director of Bands Eric Bush. Bush began meeting with W1 on a weekly basis during which W1 revealed Bean’s misconduct to him.

Witness 2

87. Witness 2 (“W2”) was a Penn State twirler from 2016-2019.

88. Like Kaitlyn and W1, Bean harassed and demeaned W2 about her weight and size. Bean’s abuse escalated throughout W2’s tenure and became so severe that she developed an eating disorder toward the end of her freshman year. On one representative occasion, Bean threw a heavy equipment bag at W2 during practice and ordered her to carry it to make sure she was “skinny enough”.

89. Like Kaitlyn, Bean used W2’s teammates to spy on her. W2 became aware that teammates, working in concert with Bean, retrieved private information from her phone and reported it to Bean. Bean monitored and surveilled W2’s whereabouts in an effort to control her relationship with teammates and to instill fear in her. Bean’s stalking became so severe that W2 began sleeping in friend’s dorm rooms or in her car in a Walmart parking lot – all in effort to stop Bean from finding her.

90. After the final 2018 regular season football game, W2 solo twirled at a fundraiser for kids with cancer. Bean and Drane found out about it the next week and called her into a meeting during which Drane yelled at her for violating a “policy” prohibiting majorettes from participating in outside events. This “policy” was apparently applied only to W2. Drane and Bean used this as a

pretext to kick her off the team prior to the 2019 bowl game.

91. That same night, W2 submitted an online Ethics and Compliance complaint about Bean. She recounted the history of abuse she had been subjected to and asked for help getting back onto to the team so she could twirl at the 2019 bowl game.

92. W2 was reinstated on the team and permitted to go to the bowl game. She was not, however, protected from future discriminatory conduct. To the contrary, Drane and Bean retaliated against her when they learned of her complaint. Drane yelled out W2 in front of other majorettes, telling her that he knows when someone “talks to” Ethics. Bean told her “We don’t want you on the [Bowl] trip” and said she would not be permitted to participate in the pregame or half time show.

93. Bean continued to harass W2 in front of her teammates and in Band Director Drane’s presence and, believing she had no escape from the abuse, and that Drane did not care at best and countenanced the abuse at worst. W2 saw no way out and became suicidal.

94. In March of 2019, W2 sought assistance from a Penn State academic advisor who was also a family acquaintance. During her meeting with the advisor, W2 was in an extreme state of panic, distraught, and hysterical and described the abuse she had been suffering and the Band director’s refusal to help her.

95. On March 22, 2019, the advisor, at W2’s request, filed a Title IX complaint with Penn State’s Office of Sexual Misconduct and Prevention (“OSMP”). The complaint named both Bean and Drane as “respondents”. The complaint listed “Non-consensual touching (genitalia, groin, breast, or buttock), Sexual Exploitation, Retaliation, Other” in response to the complaint form’s instruction to “list all behaviors alleged to have occurred”.

96. The complaint stated that W2 told him about Bean’s “mental and physical abuse. . . at practices, games, and events” and that Bean “consistently ridicule[d] her in front of other majorettes” and that “a number of times [] these girls would hit her and say it was from Heather.”

Bean “instructed some of the women to smack, hit and push [W2] . . . and go through [W2’s] phone and other belongings . . .” Bean “would verbally abuse [W2] at practice and physically shove [her] . . . [t]his action was seen by Gregory Drane and not stopped.”

97. The complaint goes on to report that “[o]n more than one occasion, [Bean] would kiss [W2] on the cheek and [W2] . . . was extremely uncomfortable with this action and told [Bean] it was not mutual.”

98. Finally, the advisor’s report describes W2’s prior “attempt to speak to someone at the Office of Ethics & Compliance, but [Drane] warned her that he knows people, and this will go nowhere.”

99. The complaint was originally assigned to OSPM’s then-Title IX Coordinator Amber Grove. OSMP sent the complaint to Assistant Vice President for Student Affairs Danny Shaha, the OSPM Assistant Director Amy Cotner, Spencer Peters who, on information and belief, was the then OSPM director, and then Affirmative Action Office Title IX Coordinator Chris Harris. OSPM then assigned the complaint to Harris.

100. By email dated March 26, 2019, W2 told Harris “I would love to share more with you or at least talk because mentally I am emotionally distraught, and I’m terrified of these people.”

101. W2 shared her notes and journals which outlined Bean’s history of discriminatory conduct toward her and other majorettes.

102. Later that Spring and having heard nothing more about the investigation, W2 transferred to another campus to finish her senior year.

103. Harris closed the file on August 1, 2019, noting that he had met “with Heather Bean and the matter does not appear to be [Title] IX-related. Dispute arising over permission to twirl at a non-sanctioned event. Alleged verbal abuse was not gender-based and was based on performance or non-performance.”

Witness 3

104. Witness 3 (“W3”) was a Penn State twirler from 2017-2021.

105. Like Kaitlyn, and W1 and W2, Bean harassed W3 on the basis of her weight and gave her uniforms that did not fit as a means of humiliating and shaming her. Bean told her that she “needed to hit the gym” to get skinnier. On other occasions, she told W2 that she needed to lose weight and that her costume would need “extra fabric” to fit. Bean was so relentless that W2 often broke down and cried – sometimes in front of her teammates.

106. W3 became afraid of Bean who would yell at her if she saw her eating. During team or media pictures, Bean purposefully moved W3 to a position where she wouldn’t be seen.

107. In October of her freshman year, W3 told Bean that she had depression and anxiety in hopes that this would stop Bean from continuing to harass her. W3 also told her that she had been sexually assaulted while in high school.

108. Bean responded by telling W3 to stay away from the other squad members and referred to her as a “whale” to a teammate.

109. Bean continued to body shame W3 throughout her tenure on majorette squad.

110. During her junior year, Bean called W3 while she was in a class and told her that she needed to pick up a different uniform and report immediately to practice. Given Bean’s history of using a uniform as means of harassing her about her body size, Bean left the class and went to her nearby family home where she began experiencing a full-blown panic attack after she had trouble locating an outfit that would she believed would be acceptable to Bean. When W3’s father saw W3, who was then screaming and hysterically crying and saying she wanted to be dead, he called Bean and told her to listen to W3 so that she would understand W3’s terror and distress.

111. Shortly after this, W3 checked herself into the ER because she was experiencing suicidal ideations. She repeatedly cited Bean as the reason she did not want to live prior to being

transferred to the hospital's mental health unit.

112. W3's mother told Bean that W3 would not be at practice because she had been admitted to the inpatient mental health unit. Bean told Drane about the admission and Drane called W3's mother and tried to get information about W3's condition. Bean called W3's mother "almost every day" that she was in the hospital seeking permission to meet with W3 at the hospital. W3's mother refused her requests.

113. Soon after returning to practice, Bean again began harassing and bullying W3 and continued throughout the remainder of her tenure as a majorette. In the lead up to the 2020 bowl game, W3's anxiety became so severe that she developed a skin condition. W3 picked at her skin as an "alternative to cutting" herself. Bean noticed W3's sores at the bowl game and ordered her off the team bus and told her to sit on the curb and cover up her sores with makeup.

Witness 4

114. Although Witness 4 ("W4") began participating as a Penn State twirler in 2019, she participated in Bean's and Freeman's local twirling club as a girl, before coming to Penn State.

115. During the Spring of 2019 majorette try outs, Bean tried to keep off her off the team because her "weight was too high." W4's tryout score was high enough (Bean was not responsible for scoring the tryouts) to prevent Bean from excluding her.

116. Bean purposefully gave W4 a uniform that was too short and, like Kaitlyn and W1-W3, used the ill-fitting skirt as a means of harassing and body shaming her. Bean relentlessly bullied and humiliated her in front of her teammates; referring to W4, Bean commented, "I know who isn't working out" and mocked by her by re-enacting her "body jiggling all over the place." During a practice and in front of the squad, Bean body shamed W4 by throwing extra-large breast cups at her and sneering, "you'll have to use these I don't have anything bigger." Bean angrily berated her in front of the team when she began crying.

117. That same season, Bean separated the larger squad members from the smaller ones and permitted only the smaller ones to get measured for custom jackets. While Bean body shamed the larger girls, she complimented the petite ones on their tiny physiques.

118. Bean purposefully ordered W4 clothes that were too small, and which didn't cover her body. Bean, referring to W4's flesh-exposing, ill-fitting uniform, commented, "this isn't a whore house."

Penn State Was Deliberately Indifferent to Bean's Gender Based Harassment

119. As detailed below, the University had actual notice at least as far back as Kaitlyn's Sophomore year when W2 levied gender discrimination complaints to the University's highest-ranking officials charged with monitoring, compliance and enforcement of the University's anti-discrimination and Title IX policies.

120. Bean continued to discriminate against Kaitlyn even after W2's gender-based discrimination complaints were provided to the University's Office of Ethics and Compliance in December of 2018 and to Penn State's Assistant Vice President for Student Affairs, OSPM Director (on information and belief) and Assistant Director, and the Title IX Coordinator Chris Harris, in March of 2019.

121. As detailed above and below, Penn State Blue Band Director Drane received multiple sexual discrimination complaints including that Bean harassed majorettes based upon their appearances, weight, eating habits, and body sizes, and; their perceived sexual conduct and the perceived threat that their purported sexual behavior presented to other majorette's. Drane also personally observed Bean engaging in discriminatory conduct. Drane failed to address the discriminatory conditions he witnessed personally and those which were embodied in the complaints made to him, despite the Penn State policy requirement that he, as a "director", report "suspected prohibited behavior. . to the Title IX Coordinator."

122. Bean continued to discriminate against Kaitlyn despite Drane's knowledge and observation of her discriminatory treatment of Kaitlyn and even after the complaints he received from Kaitlyn and her parents in the Spring of 2021.

123. Penn State's failure to take effective action to protect Kaitlyn from Bean is especially egregious given that W2's had filed two formal complaints just two years before. Penn State's response to W2's complaint, if any, was demonstrably ineffective given that Bean's harassment of Kaitlyn intensified during this period and both she and Drane levied retaliatory threats which, given W2's prior complaint, must have been designed to terrify into silence. Had Penn State included Kaitlyn or (on information and belief) other majorettes in their investigation of W2's complaint, they would have confirmed what they already knew— that Bean's discriminatory conduct affected more than just W2.

124. The University's failure to respond to discrimination complaints and dangers in Kaitlyn's case was not out of the blue. To the contrary, it was part of an established and documented pattern of similar failings dating back, at the very least, to the University's failings after the disclosure of the Penn State's misconduct in the wake of Sandusky child sexual abuse disclosures.

125. In a March 26, 2020, United States Department of Education's Office of Civil Rights Title IX compliance review the December of 2019 letter (the "OCR Letter") to the University's president, OCR, after an extensive investigation, found that During the 2019-20 academic year, the University's Title IX policies and procedures "failed to provide adequate notice to students and employees of the procedures, including where complaints may be filed; to ensure adequate, reliable, and impartial investigation of complaints; to provide procedures for complaints alleging discrimination based on sex carried out by employees and third parties; to provide designated and reasonably prompt timeframes for the major stages of the complaint process; and to provide notice of the outcome of complaints to the parties."

<https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03146001-a.pdf>.

126. This finding animates Kaitlyn’s decision to report her sexual assault to Coach Bean in the Fall of her Freshman year -- because she did not know who to make the report to if not her coach. Her sexual assault report to Bean had the tragic consequence of catalyzing Bean’s four years of abusive conduct toward Kaitlyn based upon her perceived sexual behavior.

127. OCR also determined that Penn State “failed to respond promptly and equitably to complaints of sexual harassment. . .” As W2’s experience demonstrated, Penn State’s response to her complaints did nothing to stem Bean’s continuing discriminatory misconduct. To the contrary, it prompted both Bean and Drane to retaliate against her and, predictably, emboldened Bean to intensify and her gender-based harassment toward Kaitlyn.

128. Penn State’s indifference diminished every aspect of Kaitlyn’s Penn State’s experience throughout the four years she was a student. She had trouble learning in her classes, her grades suffered, she dreaded going to practices and performing for the University and attending Drane’s for credit class in each of her four years, she missed and had to defer and make up classes because of her mental health symptoms and treatment, and needed to take two rounds of summer classes.

COUNT I

Deliberate Indifference in Violation of Title IX, 20 U.S.C. § 1681, et seq.

129. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully stated herein.

130. Plaintiff Kaitlyn Wassel attended Penn State from 2018–2022. At all relevant times, Penn State was an educational institution that received federal financial assistance and, therefore, was subject to Title IX. *See* 20 U.S.C § 1681(a).

131. Penn State received complaints of gender-based discriminatory treatment no later

than December of 2018 and March of 2019, during plaintiff's Freshman year. There is no evidence that Penn State responded to these complaints in a reasonable manner. To the contrary, Bean and Drane flouted that they had "friends" at university ethics that alerted them to complaints. They also retaliated against the student that levied the complaint. Emboldened and enabled by the University's failure to meaningfully, if at all, respond, Bean stepped up the intensity of her discriminatory conduct.

132. Also in the Spring of 2021, both Kaitlyn and her parents complained of discriminatory treatment following Kaitlyn's suicide attempt. Although Drane was aware of these complaints, Penn State did nothing to help Kaitlyn other than removing her as team captain and suggesting that she quit the team. Bean and Drane flouted their connections in the University, and Bean threatened to have Kaitlyn removed from the team or expelled if she complained to others.

133. Bean's gender-based harassment was so severe, pervasive, and objectively offensive that it deprived Kaitlyn access to the educational opportunities that Penn State provided.

134. Bean was able to discriminate against Kaitlyn because Penn State maintained a policy, custom, or practice of deliberate indifference to sex-based discrimination in its programs and, specifically, was deliberately indifferent to past reports of Bean's sexual discrimination. Penn State's deliberate indifference exposed Kaitlyn to Bean's gender-based harassment and a hostile environment based on her gender.

135. In addition, Penn State officials with authority to address the discrimination had actual knowledge of Bean's gender discrimination at least as early as December of 2018. As the OCR letter instructs, these reports were prior to the time period it issued its compliance failure letter.

136. Despite receiving these prior reports and knowing there was a substantial risk that Bean would continue harassing majorettes based upon "well-known and impermissible attitudes" about women's appearances and sexual norms, Penn State took no meaningful steps to try to remedy the problem. Penn State never subjected Bean to increased supervision. Bean remained head coach of

the majorette's and continued to harass and abuse Kaitlyn, W2, and others based upon impermissible and discriminatory gender-related stereotypes.

137. Kaitlyn and her parents reported Bean's discriminatory conduct to Director Drane who had the integral duty under Penn State's policy to report misconduct to those charged with compliance and enforcement. He failed to do so and instead, retaliated along with Bean, against Kaitlyn.

138. Penn State's deliberate indifference damaged Plaintiff including, but not limited to, pout of pocket costs of mental health and medical care, costs of summer classes and the summer employment and internship opportunities lost as a result therefrom, lower grades, and the loss of educational opportunities.

COUNT II
Violation of Equal Protection 42 U.S.C. § 1983

139. Plaintiff repeats and realleges the allegations contained in the preceding paragraphs as if fully stated herein.

140. Defendant Penn State engaged in all actions described in this Complaint under color of state law. The Pennsylvania legislature created Penn State and funds it to this day. Penn State is designated by Pennsylvania state law as "a State-related university and an instrumentality of the Commonwealth [of Pennsylvania] within the Commonwealth System of Higher Education." 24 Pa. Stat. and Cons. Stat. § 2510-503(7). Penn State employees are "state employees" under Pennsylvania law. 71 Pa. Stat. and Cons. Stat. § 5102.

141. Acting under color of state law, custom, or usage, Penn State violated Kaitlyn's right to Equal Protection under the 14th Amendment to the United States Constitution by maintaining a policy, custom, or practice of deliberate indifference to sex-based discrimination in its programs that subjected her to gender-based harassment and deprived her of equal access to educational

opportunities based on her sex. Penn State's unlawful policies, customs, and practices include the failure to adequately train employees to identify, report, or stop gender-based harassment and abuse by coaches against student, the failure to maintain clear policies and procedures for reports of sex-based harassment by employees, the failure to implement measures designed to prevent or detect sex-based abuse by coaches, the failure to monitor coaches or provide interim measures for students following reports of gender-based harassment or abuse, and the repeated failure to investigate reports of sex- based harassment by employees and coaches.

142. These policies, customs, and practices caused Kaitlyn to suffer gender discrimination and harassment and the loss of benefits of Penn State's state-related educational programs and activities on the basis of sex because, among other things, because staff members and supervisors knew about Bean's abuse toward Kaitlyn and other majorettes but did not timely intervene or report it, Penn State did not implement measures to prevent or detect gender discrimination on the majorette team, and, when Penn State did receive reports of abuse, it did not investigate or implement interim measures reasonably calculated to end Beran's harassment or protect students' access to educational opportunities.

143. Defendant's constitutional violation caused Plaintiff damages, including but not limited to damages for emotional distress, loss of educational opportunities, and out of pocket treatment related costs.

144. Plaintiff has been damaged as more specifically set forth herein and due to the manner and character of the conduct, acts and omissions of Defendants. Zara is entitled to an award of all compensatory and punitive damages authorized by law.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- (a) award Kaitlyn Wassel compensatory damages in an amount to be determined at trial, including but not limited to damages for emotional distress, pain and

suffering, therapy expenses, loss of educational opportunities, and all other direct and consequential damages available;

- (b) award prejudgment interest;
- (c) award attorney's fees and costs, and;
- (d) grant such other and further relief that the Court deems just and proper.

JURY DEMAND

145. Plaintiff demands a jury trial as to each count and claim.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Kaitlyn Wassel, asks the Court to enter a judgement in her favor against the Defendant and to award her the following relief:

- (a) General and compensatory damages;
- (b) Attorney fees and costs; and
- (c) Such other relief as the Court deems just and equitable.

Respectfully Submitted,

Dated: December 13, 2023

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